IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 4241/2001

RAJARAM Vs. BOARD OF REVENUE, AJMER & ORS.

DATE: 12.12.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. M.C. Sharma and
Mr. Anil Upman for the petitioner.
Mr. M.M. Ranjan with
Mr. H.S. Khandelwal for the respondents.

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Brief facts of the case are that on 27.11.73 Shri Hukam, Harmukh, Parsadi and Ramjilal filed a suit for declaration of Khatedari rights along with an application for temporary injunction against the father of the petitioner and other persons. The application for temporary injunction was rejected on 14.08.74.

The father of the petitioner along with other persons, filed reply to the suit on 09.04.73 and denied the allegations alleged by the plaintiff in the suit. During pendency of the suit, the father of the petitioner died on 13.06.74. The plaintiff moved an application for taking the legal heirs of the deceased father of the petitioner Heera Lal on record and the same was allowed on 04.09.80 and the name of the petitioner was taken on record.

It is alleged that summons were issued to the defendants/petitioner Rajaram and the same was duly served upon the petitioner and since after service upon the petitioner, he did not turn up, the ex parte decree was passed on 31.12.83.

On 25.06.84 when the Halka Patwari informed the petitioner that there is a decree against him, the petitioner applied for certified copy of the ex parte decree dated 31.12.83 and after obtaining the same, he filed an application under Order 9 Rule 13 CPC on 02.07.84 and the same was rejected by the Assistant Collector, Hindaun vide order dated 25.03.85, against which the petitioner preferred an appeal before the Revenue Appellate Authority (First) Jaipur Camp, Sawai Madhopur and the same also came to be dismissed vide order dated 07.08.1987.

Against the order dated 25.03.85 passed by the Assistant Collector, Hindaun and the order dated 07.08.87 passed by the Revenue Appellate Authority, the petitioner filed a revision petition before the Board of Revenue, Ajmer and that too was dismissed vide order dated 24.06.99. Thereafter the petitioner filed a review petition before the Board of Revenue and the same was also dismissed on 25.05.2000.

Therefore, being aggrieved and dissatisfied with the ex parte decree dated 31.12.83, order dated 25.03.85 passed by the Assistant Collector, Hindaun, order dated 07.08.87 passed by the Revenue Appellate Authority and orders dated 24.06.99 and 25.05.2000 passed by the Board of Revenue in revision and review petition respectively, the petitioner has filed the instant writ petition. The main challenge to the concurrent findings given by all the Court below is on the ground that the service was not made effective upon the petitioner.

The petitioner drawn the attention of this Court towards Ex.3, which was issued to the petitioner and signature on the receipt was made in the name of his deceased father Heera Lal and in the application moved on behalf of the petitioner under Order 9 Rule 13 CPC, it is stated that summons were not served upon the petitioner and forged signatures are made on the notice by the Process Server.

Further challenge to the impugned orders passed by the Courts below is on the ground of ratio decided by the co-ordinate Bench of this Court in the case of **Rajendra Kumar Vs. Dr. Ramji Lal, 1997 WLC (Raj.) UC 392,** wherein it has held by this Court that appeal against order rejecting application to set aside

ex parte decree- Impugned order passed without recording evidence of the parties, therefore, the case was remanded back for decision of application after recording evidence.

Placing reliance on the aforesaid judgment passed by the co-ordinate Bench of this Court, the learned counsel for the petitioner submits that no evidence has been recorded and the report of Process Server has been accepted as it is.

Per contra, learned counsel appearing for the respondents has strongly controverted this fact and submitted that the service was made effective upon the petitioner but the petitioner has not chosen to participate in the proceedings. He further submits the the notice was served upon the petitioner and was also served by pasting the same and the application under Order 9 Rule 13 CPC was filed after expiry of the stipulated period. Thus, all the Courts below have rightly given concurrent findings against the petitioner and the same requires no interference by this Court.

Heard rival submissions of the respective parties and carefully gone through the impugned orders passed by the Courts below and perused the judgment referred by the petitioner.

Upon careful perusal of the impugned orders, it appears that the observations made by the Assistant Collector, Hindaun have been affirmed by the Revenue Appellate Authority and the Board of Revenue and held that the petitioner was well aware as the father of the petitioner was contesting the suit. Even otherwise also, the service of notice was made effective upon the petitioner and it is not disputed that the application under Order 9 Rule 13 CPC was moved after expiry of the stipulated period. All the Courts below have given concurrent findings that no reason has been stated in the application regarding delay in filing the same well within time.

Having considered the rival submissions and the observations made by all the Courts below and considering the ratio decided by this Court in the case of **Rajendra Kumar (supra),** as the evidence has not been recorded with regard to service and without recording evidence the application under Order 9 Rule 13 CPC has been rejected, therefore, in the interest of justice, this Court deem it proper to quash and set-aside the order impugned dated 25.03.85 passed by the Assistant Collector, Hindaun as well as the order dated 07.08.87 passed by the Revenue Appellate Authority and the orders dated 24.06.99 and 25.05.2000 passed by the

Board of Revenue in revision and review petition respectively and remand the matter back to the Assistant Collector, Hindaun for hearing afresh with direction to pass appropriate order expeditiously after recording evidence in this regard and after giving opportunity of being heard to the parties subject to condition that the petitioner shall make the payment of Rs. 5,000/- as cost. Till the disposal of the application, the parties shall maintain status quo as it exists today.

With these observations, the writ petition stands disposed of.

The ex parte interim order dated 31.08.2001 granted by this Court stands rejected. The stay application also stands dismissed.

(K.S. RATHORE),J.

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